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Zoning Application No. G-859

## HEARING EXAMINER'S REPORT AND RECOMMENDATION

## TABLE OF CONTENTS

Page No.

<b>I. STATEMENT OF THE CASE.....</b>	<b>3</b>
<b>II. FINDINGS OF FACT .....</b>	<b>3</b>
<i>A. Subject Property .....</i>	<i>4</i>
<i>B. Surrounding Area.....</i>	<i>7</i>
<i>C. Zoning History.....</i>	<i>8</i>
<i>D. Proposed Development.....</i>	<i>9</i>
<i>E. Schematic Development Plan and Binding Elements .....</i>	<i>9</i>
<i>F. Master Plan .....</i>	<i>14</i>
<i>G. Development Standards for the Zone .....</i>	<i>14</i>
<i>H. Public Facilities.....</i>	<i>15</i>
1. <i>Transportation .....</i>	<i>15</i>
2. <i>Utilities .....</i>	<i>16</i>
3. <i>Schools .....</i>	<i>16</i>
<i>I. Environment and Stormwater Management.....</i>	<i>17</i>
<i>J. Community Support.....</i>	<i>17</i>
<b>III. SUMMARY OF HEARING .....</b>	<b>17</b>
<i>A. Applicant's Case in Chief.....</i>	<i>17</i>
<b>IV. ZONING ISSUES .....</b>	<b>22</b>
<i>A. The Purpose Clause.....</i>	<i>23</i>
<i>B. Compatibility .....</i>	<i>24</i>
<i>C. Public Interest .....</i>	<i>24</i>
<b>V. CONCLUSIONS .....</b>	<b>25</b>
<b>VI. RECOMMENDATION .....</b>	<b>26</b>

## I. STATEMENT OF THE CASE

Application No. G-859, filed on November 17, 2006 by Applicant 6110 Oberlin, L.L.C., requests reclassification from the R-60 Zone to the C-T Zone of 4,862 square feet of land located at 6110 Oberlin Avenue in Glen Echo, Maryland, on property known as Lots 5 and 6, Block 6, National Chatauqua of Glen Echo, in the 7th Election District. The application was filed under the Optional Method authorized by Code § 59-H-2.5, which permits binding limitations with respect to land use, density and development standards or staging.

The application was initially reviewed by Technical Staff of the Maryland-National Capital Park and Planning Commission (“M-NCPPC”) who, in a report dated February 16, 2007, recommended *approval*. The Montgomery County Planning Board (“Planning Board”) considered the application on March 1, 2007 and, by a vote of 5 to 0, recommended *approval*, finding that the proposed rezoning and development would be compatible with the surrounding area, would implement the applicable master plan zoning recommendation, and would be in the public interest. See Ex. 33. The Planning Board also stated its support for the requested waiver of one required on-site parking space because adequate on-street parking is available for the use. See *id.*

A public hearing was convened on March 16, 2006, after proper notice, at which time evidence and testimony were presented in support of the application. No opposition was stated during the hearing, nor is any reflected in the record. The record was held open to receive supplemental submissions from the Applicant and Technical Staff, and closed on April 2, 2007.

## II. FINDINGS OF FACT

For the convenience of the reader, the findings of fact are grouped by subject matter. Any conflicts in the evidence are resolved under the preponderance of the evidence test.

### **A. Subject Property**

The subject property consists of two parcels with a combined area of approximately 4,862 square feet. The site is located on the north side of Oberlin Avenue, immediately south of Glen Echo Park and just west of Mac Arthur Boulevard. The site is almost square, with approximately 73 feet of frontage along Oberlin Avenue. It is relatively flat and contains no forest, streams or wetlands. The property is developed with a one and a half story brick house. Vegetation consists of a few scattered trees and shrubs, as well as tall bamboo in the northeast corner of the property. There are two specimen trees: a 40" sycamore that would be removed in connection with the proposed redevelopment, and a 36" sycamore near the western boundary that the Applicant plans to preserve.

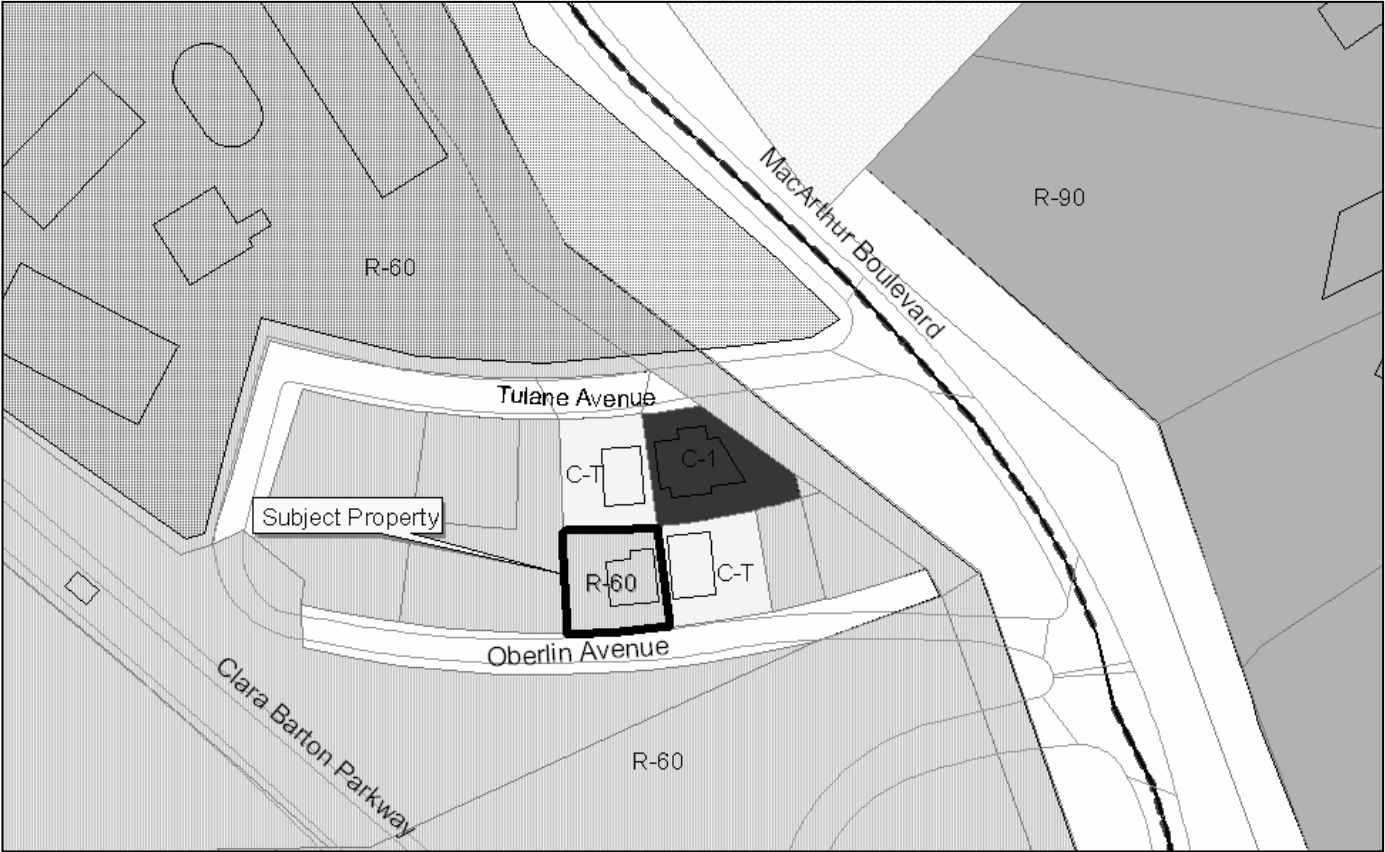
As shown on the zoning vicinity map on the next page, to the north and east the property abuts properties that are classified under the C-T Zone. Both of these properties are developed with office uses located in formerly residential structures that retain an exterior residential appearance. The Applicant has had a long association with these properties, having served as the architect in charge of remodeling both of them when they were converted to office use. The Applicant currently leases the property to the east for his office. If the present rezoning request is approved, he plans to extensively renovate the existing structure on the property, build a small, architecturally compatible addition onto the rear of the structure, and move his offices into the renovated building.

Diagonally northeast of the subject site is the Irish Inn at Glen Echo, a restaurant operating in a building that has been devoted to restaurant use for many years. The property is classified under the C-1 Zone. The portion of the Irish Inn site facing the subject property and the other two C-T properties is the rear of the restaurant, including its trash dumpster.

Immediately west of the subject site are two lots owned by the Town of Glen Echo, which are currently vacant and wooded. They are classified under the R-60 Zone and recommended for use as a park or for single-family detached homes. Farther north and west is Glen Echo Park.

To the south, the subject property abuts federally-owned parkland that is part of the C&O Canal National Historic Park and the Clara Barton Parkway.

**Zoning Map, Excerpted from Staff Report**



Photographs of the subject property and neighboring buildings follow.

**Subject Property, from Ex. 15(g)**



**Bell Builders Building, 6112 Oberlin Avenue, Adjacent to the East, from Exhibit 15(b)**



**Law & Associates Building, 6111 Tulane Avenue, Adjacent to the North, from Exhibit 15(d)**



**Irish Inn at Glen Echo, Diagonally to Northeast, from Exhibit 15(f)****B. Surrounding Area**

The surrounding area must be identified in a floating zone case, such as the present case, so that compatibility can be evaluated properly. The “surrounding area” is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development. In the present case, Technical Staff defined the surrounding area as bounded generally by Glen Echo Park to the north, MacArthur Boulevard to the east, federally-owned parkland maintained by the National Park Services to the south, and Clara Barton Parkway to the west. The Applicant’s land planner, Phil Perrine, essentially agreed, as does the Hearing Examiner.

The surrounding area, as described above and shown in the aerial photograph below, contains the mix of uses described in the previous section: Glen Echo Park, the Irish Inn, two offices in residential-style buildings, and vacant land owned by the Town of Glen Echo and the federal government. Mr. Perrine pointed out that because of the large federal land ownership, no additional development is likely in the immediate area unless the Town of Glen Echo decides to develop its lots.

**Aerial Photograph, Ex. 13(a)**

The closest residential neighborhood to the subject site is to the east, separated from the site by MacArthur Boulevard and a substantial wooded area. As noted by both Technical Staff and Mr. Perrine, that neighborhood is unlikely to be affected by the proposed rezoning and development, given the moderate intensity of the proposal and the geographic separation.

**C. Zoning History**

The subject property was classified under the R-60 Zone by the 1954 Zoning Ordinance. That zoning was reaffirmed by Sectional Map Amendment in 1974 (SMA F-937) and 1990 (SMA G-666).



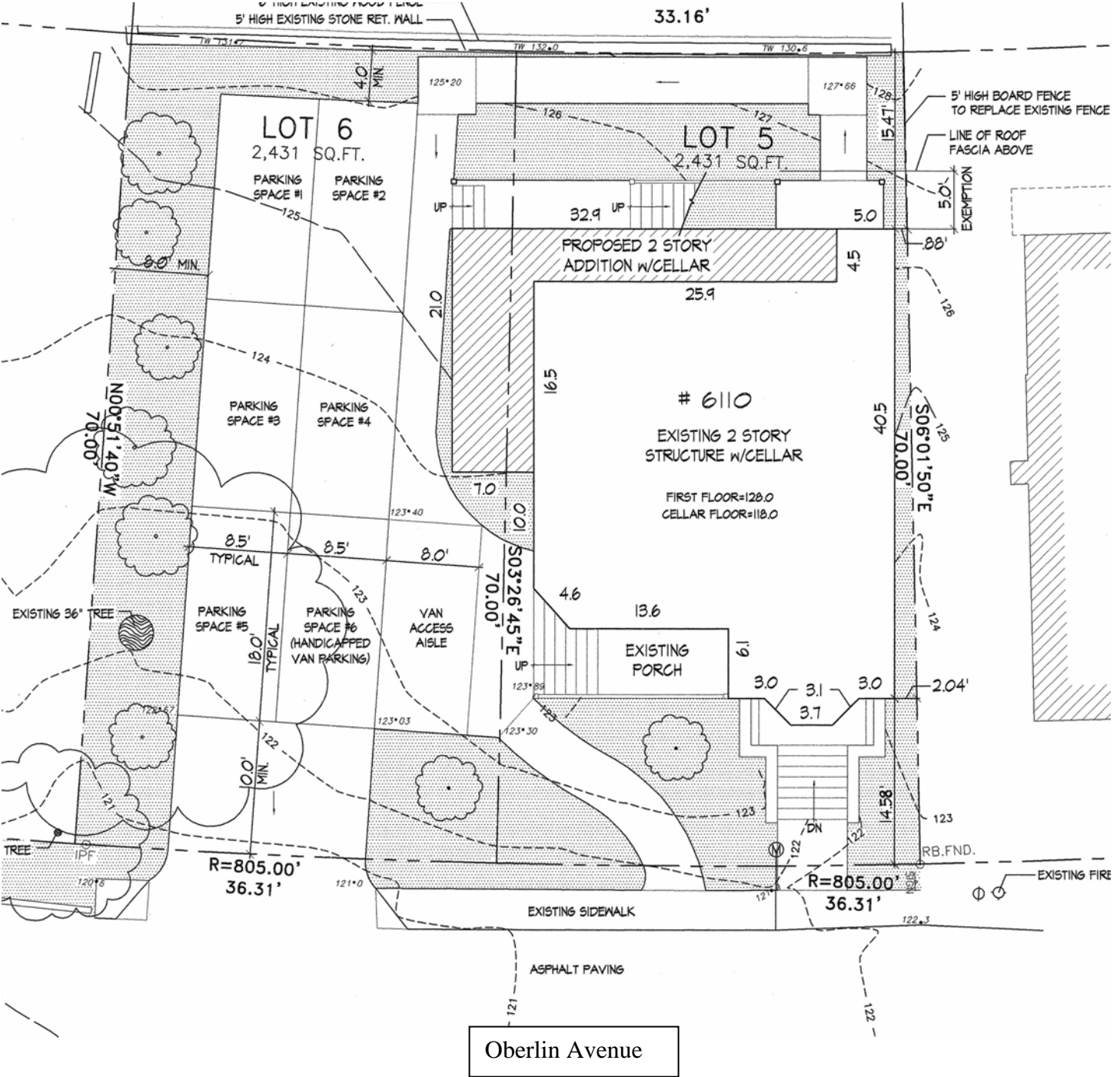
#### **D. Proposed Development**

The Applicant proposes to extensively renovate the existing structure and build a small, architecturally compatible addition onto the back, while maintaining the building's exterior residential character. The building would then be used for combined office and residential purposes, with office use on the ground floor and cellar level, and a residential apartment on the second floor. The front yard would be retained in grass, with stacked parking along the west side of the building, similar to the stacked parking arrangements used for the two adjacent C-T properties. Preservation of the existing structure is assured, because the C-T Zone prohibits the construction of a new building unless the site has a minimum street frontage of 100 feet, which the subject property lacks. See Code § 59-C-4.302(1).

#### **E. Schematic Development Plan and Binding Elements**

Pursuant to Code § 59-H-2.52, the Applicant in this case has chosen to follow the "optional method" of application. The optional method requires submission of a schematic development plan that specifies which elements of the plan are illustrative and which are binding, i.e. elements to which the Applicant consents to be legally bound. Those elements designated by the Applicant as binding must be set forth in a Declaration of Covenants to be filed in the county land records if the rezoning is approved. The legal effect of the covenants is to obligate any future owner of the property to comply with the binding elements specified on the SDP. Thus, the optional method allows an applicant to specify elements of its proposal that the community, reviewing agencies and the District Council can rely on as legally binding commitments. Illustrative elements of the SDP may be changed during site plan review, but the binding elements cannot be changed without a separate application to the District Council for a development plan amendment. The graphic portion of the SDP in this case is reproduced below, with other elements on the pages that follow.

Schematic Development Plan Graphics, from Ex. 39(b)



The Applicant in the present case has proposed four binding elements, which are part of the Development Standards Table below. These binding elements limit development of the site to reuse of the existing structure, with an addition, and limit the use to 2,660 square feet of office space with a garden apartment, or a special exception. They also set a minimum green area of 25 percent, considerably higher than the 10 percent minimum in the zone, and they commit the Applicant to providing tree save measures for the 36" Sycamore on the western property line.<sup>1</sup>

**SDP Development Standards Table, Including Binding Elements, from Ex. 39(b)**

Standard	CT Zone - Development Standards					Binding Elements
	Required		Proposed			
Lot Area	N/A		4862 sf	Existing Lots 5 & 6		
Frontage	N/A		72.62 ft			
Gross Floor Area Increase (max)	40%	2465 sf	38%	2431 sf		
Floor Area Ratio (maximum)	0.50	2431 sf	0.5	2431 sf		
Building Coverage (maximum)	30%	1458.6 sf	30.00%	1458 sf		
Building Height (maximum)	24 ft		24 ft			
Building Setback - Front (min)	10 ft		14.58 ft			
Building Setback - Side (min)	15 ft*		right side front right side rear left side front left side rear	2.04 ft* .88 ft* ± 38.5 ft ± 28.67 ft		
Building Setback - Rear (min)	15 ft		15.46 ft			
Parking Setback-Side (min)	8 ft		8 ft			
Parking Setback-Rear (min)	4 ft		4 ft			
Green Area (min)	10%	486.2	30%	1455 sf	25%	
Tree Preservation	N/A		N/A			Applicant will provide tree protection measures for the existing 36 ft sycamore tree located on the west property line.
Uses	N/A		N/A			The use will be limited to 2,660 square feet of office use with a garden apartment, or a special exception use.
Building	N/A		N/A			The building will consist of a reuse of the existing structure with an expansion.

\* Per S59-C-4.305(3), for an existing building, the setback may be less than 15 feet.

<sup>1</sup> The text identifies a 36-foot Sycamore, but the graphics correctly identify the tree by its 36-inch diameter.

Notes related to the Development Standards Table are provided below, followed by information on parking.

#### Development Standards Notes

- Existing zone: R60  
Existing use: Single Family Residential  
Constructed: 1903  
Proposed use under CT zone: Mixed Use Building (office space and a one bedroom apartment).
- Existing gross floor area = 1761 sf  
Proposed gross floor area = 1761 sf x 1.38 = 2431 sf per Sec. 59-C-4.302 (c)(2)  
Lower Level shall remain "cellar" as defined by article 59-A
- Side yard setback on east side to remain as set by existing structure per Sec. 59-C-4.305(b)(3).
- Exterior Stairway provided per Sec. 59-B-3.2 not to project more than 5 feet over a minimum rear yard.
- Building height of 24 ft is measured from street grade opposite middle front of building to mean elevation height level between eaves and ridge of gable roof. This building height does not apply to the cupola/skylight feature as provided by article 59-B-1.1 which exempts cupolas, domes, and other rooftop architectural features from height limitations.  
The area of this structure = 135.63 or 9% of the total roof area

				Parking Standards for Mixed Use Structure				
				Weekday Parking		Weekend Parking		Nighttime
				Daytime	Evening	Daytime	Evening	
				6 am - 6 pm	6pm - midnight	6am-6pm	6pm-midnight	midnight-6am
<b>Office/Industrial</b>				100%	10%	10%	5%	5%
2.4/1000 sf								
2656.25 sf				6.38	0.64	0.64	0.32	0.32
<b>Apartment/Multi-Family dwelling</b>				50%	100%	100%	100%	100%
1.25/1 BR								
				0.625	1.25	1.25	1.25	1.25
<b>Total Parking Spaces</b>				7.00	1.89	1.89	1.57	1.57
<b>NOTES:</b>								
1st floor proposed office area:			1414.50					
Lower Level cellar proposed area:			1241.75					
Total Office Parking Area:			2656.25					
Total Parking Spaces Required-7								
Total Parking Spaces Provided, including one van accessible HC space-6 See note #3								

#### Parking Standards Notes

- Tandem parking is to be provided due to dimensional constraints of site.  
Proposed parking arrangement shall be similar to those approved for adjacent properties, 6111 Tulane Avenue and 6112 Oberlin Avenue, converted from R60 to CT zones for office use.
- Because of the availability of on street parking along Oberlin Avenue, waiver of 1 daytime parking space requested per Section 59-E.4.5 in order to properly accommodate a van accessible handicapped parking space on-site.

As shown in the Development Standards Table on page 11, the size of the addition planned for this site is limited in two ways. For re-use of an existing building, the C-T Zone requires that any addition be compatible with neighboring residential and commercial uses, and limits its size to a maximum gross floor area increase of 40 percent. See Code § 59-C-4.302(c). Based on an existing gross floor area of 1,761 square feet, this would limit the addition in this case to 2,465 square feet. However, Section 59-C-4.304 imposes a Floor Area Ratio limit of 0.5, which further restricts the addition to its proposed size of 2,431 square feet. The two-story addition would be attached to the left rear corner of the building. Its footprint would measure approximately 33 feet along the rear of the building, with a depth of 4.5 feet, and approximately 21 feet along the left side of the building, with a depth of 7 feet. As may be seen on the SDP (p. 10), this represents a modest increase in the building footprint. As depicted in the illustration reproduced below, the addition would be architecturally compatible with the existing structure. Given that compatibility of any addition is a requirement of the zone, the Planning Board would have authority to examine this issue again at site plan review.

**Illustration of Proposed Renovation and Addition, Ex. 15(i)**



The Applicant proposes to provide six on-site parking spaces, stacked in three rows of two. This is a similar arrangement to the parking provided for the two adjacent C-T office uses, and is considered acceptable by the Planning Board and its Technical Staff. The six spaces, including one van-accessible handicapped space, fall one space short of the seven spaces required under the Zoning Ordinance. The Planning Board has the authority under Section 59-E-4.5 of the Zoning Ordinance to waive the requirement for seven spaces during site plan review, and has indicated its support for the waiver request. See Ex. 33. As noted by Technical Staff and Mr. Perrine, permitting six spaces instead of seven would allow the Applicant to retain a larger green area on site, and ample on-street parking is available due to the large amount of undeveloped land on the block.

#### **F. Master Plan**

The subject property is located within the area covered by the *Bethesda-Chevy Chase Master Plan, Approved and Adopted 1990* (the “Master Plan”). The Master Plan recommended the subject site and the two adjacent properties to the east and the north for C-T zoning, indicating that it would be desirable to retain the existing houses to keep the residential scale and character of the block, but to provide flexibility with regard to their use due to their proximity to the restaurant. The Master Plan did not recommend assemblage of the three properties for redevelopment, preferring to retain the existing residential scale. See Staff Report at 5, citing Master Plan at 77.

The abutting property to the north was reclassified to the C-T Zone by Sectional Map Amendment in 1990, with the owner’s consent, and the property to the west was reclassified to the C-T Zone by LMA No. G-700 in 1993.

#### **G. Development Standards for the Zone**

As shown in the table on page 11, which corresponds to the Development Standards table in the Staff Report, the proposed development would be consistent with the applicable development standards for the C-T Zone.

## **H. Public Facilities**

Under the County's Adequate Public Facilities Ordinance ("APFO," Code §50-35(k)), an assessment must be made as to whether the transportation infrastructure, area schools, water and sewage facilities, and police, fire and health services will be adequate to support a proposed development, and in turn, whether the proposed development would adversely affect these public facilities. Both the Planning Board and the Council have roles to play in this assessment process. The Planning Board reviews the adequacy of public facilities at subdivision, under parameters that the County Council sets each year in the Annual Growth Policy ("AGP") and biennially in the two-year AGP Policy Element.<sup>2</sup> While the final test under the APFO is carried out at subdivision review, the District Council must first make its own evaluation as to the adequacy of public facilities in a rezoning case, because the Council has primary responsibility to determine whether the reclassification would be compatible with the surrounding area and would serve the public interest. The District Council is charged at the zoning stage with determining whether the proposed development would have an adverse impact on public facilities and, if so, whether that impact would be mitigated by improvements reasonably probable of fruition in the foreseeable future.

### **1. Transportation**

Under the 2003-05 AGP Policy Element, which remains in effect, subdivision applications are subject to only one transportation test, Local Area Transportation Review ("LATR").<sup>3</sup> The Planning Board recognizes its LATR Guidelines as the standard to be used by applicants in the preparation of reports to the Hearing Examiner for zoning cases. LATR Guidelines at 1. LATR typically involves a traffic study intended to evaluate whether a proposed development would result in unacceptable congestion at nearby intersections during the peak hours of the morning and evening peak periods (6:30 to 9:30 a.m. and 4:00 to 7:00 p.m.). In the case of a development that would generate fewer than 30 peak hour trips, however, a traffic study is not required.

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<sup>2</sup> See 2003-05 Annual Growth Policy – Policy Element, Resolution No. 15-375, adopted October 28, 2003, which remains in effect. The Hearing Examiner hereby takes official notice of the 2003-05 AGP Policy Element.

<sup>3</sup> See 2003-05 AGP Policy Element at 6-7; *Local Area Transportation Review Guidelines Approved and Adopted July 2004* ("LATR Guidelines") at 1. The Hearing Examiner hereby takes official notice of the LATR Guidelines.

In the present case, the Applicant's traffic consultant determined that the proposed development of approximately 2,600 square feet of office space and one garden apartment would generate approximately two vehicular trips during the morning peak hour and four during the evening peak hour. See Ex. 31(a). The traffic consultant and Transportation Planning Staff at the MNCPPC agree that this minimal number of trips would not overburden the local roadway network. See Ex. 31(a); Transportation Planning Memorandum dated February 8, 2007, attached to Staff Report.

Transportation Planning Staff's recommendation of approval was limited to the proposal for approximately 2,600 square feet of office and one garden apartment. During the hearing, the Hearing Examiner pointed out that the submitted Development Plan did not include a binding element limiting the use of the property. If the rezoning were granted without such a binding element, the property could legally be used for any use available under the C-T Zone, including several – such as a bank or a private educational institution – that might have more significant traffic impacts. In response, the Applicant agreed to limit the use, by binding element, to 2,660 square feet of office with one garden apartment, or a special exception use. In the event that special exception approval is sought for this property, the Board of Appeals will review traffic and other possible adverse impacts before granting approval.

## **2. Utilities**

Technical Staff stated in its report that water and sewer are available at the site, and that the proposed rezoning would not affect water or sewer service in the area. See Staff Report at 14. Staff notes that the Fire Marshal has reviewed the proposal and identified no fire control issues. In light of the developed character of the surrounding area and former residential use of the site, it may be assumed that other utilities such as electric, telephone and gas are available to this site.

## **3. Schools**

The proposed re-use would change the property from one single-family detached dwelling to an office with one garden apartment (or a special exception use, which could be combined with no more than one residential dwelling unit). Montgomery County Public Schools estimates that



one single-family detached home generates 0.5 students and one garden apartment generates 0.3 students. Thus, the proposed re-use can be expected to have no impact on the public schools. See Ex. 38; Tr. at 51-52. Moreover, the Planning Board made a finding on June 22, 2006 that all school clusters meet the test for adequate capacity under the Growth Policy for FY 2007. See Ex. 12 at 10.

### **I. Environment and Stormwater Management**

The County's Forest Conservation Law does not apply unless a Preliminary Plan of Subdivision is required, because the subject property measures less than 40,000 square feet. Even if subdivision were required, the property would be exempt from providing a forest conservation plan because it measures less than 1.5 acres and has no existing forest. Only a tree save plan would be required, which the Applicant has already committed to provide.

The proposed project would not be required to provide stormwater management because it measures less than 5,000 square feet and would not require any excavation exceeding 100 cubic yards of soil. The site is not within a Special Protection Area or Primary Management Area, and has no stream buffers, wetlands or steep slopes.

### **J. Community Support**

The record includes letters in support from The Irish Inn and the owners of both of the adjacent C-T properties. See Exs. 22, 23 and 24. All three letters note that the subject site is currently in poor condition, and that the Applicant has done very successful renovations on all three nearby buildings. All three letters also support the requested waiver of one parking space, noting that there is plenty of parking available on the street during the day.

## **III. SUMMARY OF HEARING**

### **A. Applicant's Case in Chief**

1. Richard A. Leggin, Applicant. Tr. at 12 – 31.

Mr. Leggin is the sole director of the Applicant. He is also president of a small firm, Richard Leggin Architects, which currently occupies the building next door to the subject site as a

tenant. His firm's expertise is in high-end residential architecture and major renovations. His current intention is to move his office to the subject property once the renovations are complete.

Based on more than 20 years' experience as an architect in the Washington, D.C. area, Mr. Leggin was designated an expert in architecture.

Mr. Leggin described the subject property and its surroundings. He noted that he was the architect in the remodeling of both of the residential-type structures adjacent to the subject site, one owned by Bell Building and the other by Sally Law Financial Services. He also provided architectural services in a recent minor renovation of the Irish Inn, located just northeast of the Bell Building. Mr. Leggin noted that the two lots adjacent to the subject site to the west are undeveloped property owned by the Town of Glen Echo, which are designated in the Master Plan for park land. Farther west is open space owned by the National Park Service, which is currently used for construction trailers in connection with ongoing renovations at neighboring Glen Echo Park. To the east of the subject property, beyond the three buildings in the immediate vicinity of the subject site, steep slopes separate the area of the subject property from residential development.

Turning to the subject property, Mr. Leggin described the existing structure as a very small, Glen Echo cottage dating from 1910 or earlier. He stated that it was "lightly built" as a summer cottage. His intent is to preserve the building, repair terrible water damage to the foundation, and build a small addition on the back of the building that would be very compatible with the existing structure. Mr. Leggin stated that the addition would add about 300 square feet to the building footprint. The addition would measure approximately 7 feet by 21 feet along the west side of the building, and about 4.5 feet by 33 feet along the back of the building. Mr. Leggin noted that the size of the addition is limited by the development standards for the zone, which impose a maximum FAR, as well as by the 15-foot rear setback requirement and the building coverage requirement.

With regard to parking, Mr. Leggin testified that he proposes to have stacked parking on one side of the property. He noted that his firm's parking needs are not great, and that plenty of parking is available on the street, since there are no buildings past his on Oberlin Avenue. Mr. Leggin

identified on the SPD a large sycamore tree that a binding element would require him to protect during construction.

Mr. Leggin noted that the subject property is not desirable from a residential standpoint due to the proximity of the Irish Inn, the rear of which contains a dumpster, and often things like beer kegs and trash.

Mr. Leggin testified that he brought his plans for the subject site to the town of Glen Echo on two occasions and received generally positive feedback. Most of the members were very pleased to see a plan that would preserve the character of the building, although they have some long-range concern about this application leading to future rezoning to more intense commercial zones. In addition, one dissenting council member who has opposed every project in this part of Glen Echo, including recent restoration work at Glen Echo Park, was opposed to the proposed project. As a result, the town did not take a formal position on the application.

2. Charles Grimsley, civil engineer. Tr. at 31 – 35.

Mr. Grimsley was designated an expert in civil engineering. He testified that his firm performed a survey of the subject property, including the location of existing improvements, and confirmed that utilities are available for the site, including sewer and water. Mr. Grimsley stated that based on his understanding of county regulations, the subject property is exempt from stormwater management requirements because it measures less than 5,000 square feet and would not involve any excavation exceeding 100 cubic yards. Mr. Grimsley is aware of no adverse effects that the proposed development would have on the surrounding area.

3. Phil Perrine, land planner. Tr. at 35 – 58.

Mr. Perrine was designated an expert in land planning. He testified that his firm prepared a land planning report in this case and assisted Mr. Leggin in preparing the SPD.

Mr. Perrine described the zoning and use of nearby properties. He agreed with the general description of the “surrounding area” used in the Staff Report, although he would name the four streets surrounding the small enclave of four buildings, rather than the larger properties and roadways that Staff listed. Mr. Perrine noted that no additional development can be expected in the

surrounding area unless the town of Glen Echo decides to build something on its two parcels. Describing the zoning in the area, Mr. Perrine noted that the Irish Inn property is zoned C-1, except for two lots it uses for parking, which are classified under the R-60 Zone. The Law Building and the Bell Builders building are both classified under the C-T Zone. Mr. Perrine noted that the Law Building was rezoned to C-T by sectional map amendment in 1990, pursuant to a practice whereby the Planning Board sent letters to property owners asking for their consent to the application of a floating zone on their property, and if consent was given, the rezoning was done by sectional map amendment. The Bell Builders site was rezoned by LMA No. G-700 in 1993.

Mr. Perrine reported that all of the property west of the subject site is zoned R-60. Across Mac Arthur Boulevard is a residential area classified under the R-90 Zone.

Mr. Perrine highlighted the requirement under the C-T Zone that a lot must have at least 100 feet of frontage to permit an existing building to be torn down. On the subject property and the two adjacent C-1 properties, the lots have less than 100 feet of frontage, so the only acceptable form of redevelopment was to renovate the existing building. In addition, the development standards for the C-T Zone restrict expansion to a size no greater than 40 percent of the size of the building, with an FAR limit of 0.5 and a 30 percent building coverage limit.

Mr. Perrine opined that the proposed C-T zoning and redevelopment would be compatible with adjoining uses and zoning, and very much in keeping with the character of the adjacent properties. He noted that the subject site and the two adjacent buildings would all have similar uses, styles and settings, and would be virtually surrounded by open space.

Mr. Perrine opined that the proposed zoning and development would be consistent with the recommendations of the master plan, which specifically recommends the C-T Zone for the subject site and the two adjacent properties that have already been rezoned. He suggested that the Council felt commercial use would be appropriate on those three properties because of their proximity to the Irish Inn, which was, at the time of the master plan's adoption, the Inn at Glen Echo, and had been operating as a restaurant for many years. In addition, the Council felt that assemblage of these three properties would not be appropriate. They preferred to retain the residential scale and appearance.

Mr. Perrine opined that the proposed rezoning and development would satisfy the purposes and requirements of the C-T Zone. He noted that one of the purposes of the zone is for use in areas that are designated for C-T on the appropriate master plan, which is the case here. He also reviewed the development standards for the zone, and the proposed development's compliance with them.

When the Hearing Examiner asked whether a change in the amount of office space (which is not fixed as a binding element) would change the traffic impacts of the proposed development, Mr. Perrine noted that Transportation Planning Staff at the MNCPPC relies on trip generation estimates from the Institute of Transportation Engineers. Those estimates suggest that during the evening peak hour, an office use will generate 2.24 trips per 1,000 feet. The total office space shown on the SDP is 2,656 square feet, which would generate 6 trips (2.656 times 2.24). Mr. Perrine noted that even if the entire building were dedicated to office use, the number of trips generated would increase only by two trips, still far below the 30-trip threshold for an LATR study.

Addressing public facilities other than roads, Mr. Perrine noted that there is fire station less than a mile from the site. He observed that the proposed development would replace a single-family detached home with an apartment, which, according to information provided to Mr. Perrine by Montgomery County Public Schools, generates fewer school children: a single-family home is expected to generate 0.5 children and a multi-family unit is expected to generate 0.3 children. He also opined that retention of the existing building, preservation of its residential scale and appearance, and the stabilizing effect of putting a productive use on the property would all be in the public interest.

Mr. Perrine further opined that six on-site parking spaces, rather than the seven normally required, would be adequate for the proposed use. He stated that the parking facility as proposed would satisfy the purposes of a parking facility under the Zoning Ordinance, four of which relate to protecting the health, safety and welfare of those using adjacent properties. Mr. Perrine noted that providing a seventh parking space on site would required additional paving, resulting in less green area. With six spaces, the site has more green space and satisfies all required setbacks. An existing retaining wall and fence at the rear of the site would be retained, providing a buffer for the

abutting neighbor. Mr. Perrine finds six spaces sufficient, in part because there is plenty of space to park on the street. He acknowledged that the SDP provides for tandem parking, with one car behind the other, but stated that this is necessary due to the small size of the site. He noted that the access point is really the only one possible, that access for the disabled would be provided for in front of the building, and that the proposed development would not create any unsafe conditions on Oberlin Street, which is not heavily traveled. Finally, Mr. Perrine noted that appropriate lighting would be provided for the parking area, consistent with the Zoning Ordinance's objectives for parking facilities.

Mr. Perrine concluded by reiterating that the proposed rezoning and development would be compatible with the surrounding area, achieve master plan goals, and provide stability for the area.

#### **IV. ZONING ISSUES**

Zoning involves two basic types of classifications: Euclidean zones and floating zones. The term "Euclidean" zoning arose from the seminal United States Supreme Court case upholding the land use authority of local governments, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). Euclidean zoning divides the territory of a local jurisdiction into zoning districts with set boundaries and specific regulations governing aspects of land development such as permitted uses, lot sizes, setbacks, and building height.

A floating zone is a more flexible device that allows a legislative body to establish a district for a particular category of land use, with regulations specific to that use, without attaching that district to particular pieces of property. Individual property owners may seek to have property reclassified to a floating zone by demonstrating that the proposed location is appropriate for the zone, i.e., it satisfies the purpose clause for the zone, the development would be compatible with the surrounding area, and it would serve the public interest.

Montgomery County has many floating zones, including the C-T Zone. The C-T Zone contains development standards and a post-zoning review process that delegate to the Planning Board site specific issues such as exact building location, landscaping and screening. The application of the zone to the subject property involves an evaluation of eligibility under the purpose clause,

compatibility with existing and planned land uses in the surrounding area, and relationship to the public interest.

### **A. The Purpose Clause**

The purpose of the C-T Zone as stated in Code §59-C-4.301 is set forth below.

#### **59-C-4.301. Purpose.**

The purpose of the C-T zone is to provide sites for low-intensity commercial buildings which, singly or in groups, will provide an appropriate transition between one-family residential areas and high-intensity commercial development. The C-T zone is intended to constitute a margin of limited width at the border between a commercial area and a one-family residential area. For that reason, the C-T zone can only be applied:

- (a) In areas designated for the C-T zone on adopted and approved master or sector plans; or
- (b) On property so located that it is between and adjoining or separated only by a street, highway, or utility right-of-way from both of the following uses:
  - (1) Existing or proposed one-family residential uses; and
  - (2) Existing high-intensity commercial uses. As used herein, the term "high-intensity commercial use" refers to any commercial or central business district development with an existing height that is greater than 40 feet. The term "high-intensity commercial use" does not include development in the C-1 zone.

The fact that an application complies with all specific requirements and purposes set forth herein shall not be deemed to create a presumption that the application is, in fact, compatible with surrounding land uses, and, in itself, shall not be sufficient to require the granting of an application.

Under the plain language of Section 59-C-4.301, a finding that a property has been designated for the C-T Zone on an adopted and approved master plan is sufficient to satisfy the purpose clause. Having been recommended for the application of the C-T Zone in the *Bethesda-Chevy Chase Master Plan, Approved and Adopted 1990*, the subject property satisfies this first prong of the C-T Zone purpose clause. No further inquiry is necessary.

## **B. Compatibility**

An application for a floating zone reclassification must be evaluated for compatibility with existing and planned uses in the surrounding area. The requirements of the C-T Zone and the binding elements of the Schematic Development Plan combine to ensure that with the proposed reclassification, the existing structure on the subject site would be remodeled and enlarged slightly, but would retain its residential scale and character, contributing to the stability of land uses in the area. Only two adjacent properties are developed, and both house buildings that are similar in character and use to the redevelopment proposed for the subject site: office uses located in residential-type structures. All three properties would have similar uses, styles and settings. They would also have similar stacked parking arrangements, and the possible use of on-street parking for the subject property would have no discernible impact on neighboring uses, given the ample space available.

The remainder of the block to the west is undeveloped and lightly forested. The only other developed site in the immediate vicinity is occupied by The Irish Inn, which can only benefit from the renovation and productive reuse of the subject site. The nearby Glen Echo Park is unlikely to be affected by the proposed rezoning and redevelopment, and the same can be said of the residential neighborhoods on the far side of MacArthur Boulevard.

The Hearing Examiner agrees with Technical Staff's conclusion that "the result of the rezoning will be improvements to a single-family residence and the stabilization of land use and neighborhood character." See Staff Report at 8.

## **C. Public Interest**

The applicant must show that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. The State Zoning Enabling Act applicable to Montgomery County requires that all zoning power must be exercised:

" . . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district." [*Regional District Act*,



Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110].

When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities. Additional issues affecting the public interest may also be considered.

The Planning Board and Technical Staff opined that the proposed development would comply with the Master Plan, and the Hearing Examiner agrees. The Master Plan recommends the subject property as appropriate for reclassification to the C-T Zone, and specifically calls for retention of the existing residential scale and character of the building, which would be preserved under the submitted Schematic Development Plan. The subject property is the last in a group of three properties that were recommended for individual redevelopment under the C-T Zone, and its redevelopment would complete the renovation of this small enclave. Both the Planning Board and Technical Staff recommend approval of the application.

With regard to public facilities, the evidence indicates that the proposed rezoning and redevelopment would be adequately supported by and would have no adverse effect on local roadways, public utilities and the public schools.

For all of these reasons, the Hearing Examiner concludes, based on the preponderance of the evidence, that the proposed reclassification bears sufficient relationship to the public interest to warrant its approval.

## **V. CONCLUSIONS**

Based on the foregoing analysis and after a thorough review of the entire record, I make the following conclusions:

1. The application satisfies the requirements of the purpose clause;
2. The application proposes a form of development that would be compatible with existing and planned land uses in the surrounding area;
3. The requested reclassification to the C-T Zone bears sufficient relationship to the public interest to justify its approval.

## VI. RECOMMENDATION

I, therefore, recommend that Zoning Application No. G-851, seeking reclassification from the R-60 Zone to the C-T Zone of 4,862 square feet of land located at 6110 Oberlin Avenue in Glen Echo, Maryland, in the 7th Election District, be **approved** in the amount requested and subject to the specifications and requirements of the final Schematic Development Plan, Ex. 39(b); provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Schematic Development Plan within 10 days of approval, in accordance with § 59-D-1.64 of the Zoning Ordinance.

Dated: May 11, 2007

Respectfully submitted,

Françoise M. Carrier  
Hearing Examiner